

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY
KITITITAS COUNTY TO PAT KEATING

HELEN WOLFSEHR, HAROLD LINDSTROM,
GLORIA LINDSTROM, DOROTHY HOWARD,
DOROTHY COLE, STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY and SLADE
GORTON, ATTORNEY GENERAL,

Appellants,

vs.

KITITITAS COUNTY AND PAT KEATING,

Respondents.

SHB Nos 103, 103-A, 103-B,
103-C and 103-E

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

A hearing on the consolidated above-numbered requests for review
to the issuance of a conditional shoreline management substantial
development permit was held in Ellensburg, Washington on February 21
and 22, 1974 before Board members, Walt Woodward (presiding), W. A.
Gissberg, Mary Ellen McCaffree, Edward Heavey, Ralph A. Beswick and
Robert F. Hintz.

1 The State of Washington, appellants, appeared through Thomas C
2 Evans, assistant attorney general; appellants, Helen Wolfsehr, Gloria
3 Lindstrom and Dorothy Cole appeared pro se; appellants Harold Lindstrom
4 and Dorothy Howard did not appear.

5 Respondent, Pat Keating, appeared through his attorney, John
6 Gilreath.

7 Kittitas County was not represented by counsel, although two of
8 its county commissioners were present, as was its planning director.

9 Having heard the testimony and arguments and the exceptions of the
10 parties, and being fully advised, the Board makes and enters these

11 FINDINGS OF FACT

12 I.

13 In May, 1973, Pat Keating (respondent) a Shell Oil Company gasoline
14 dealer, purchased three and one-half acres of unimproved land (hereinafter
15 site) near Ellensburg, Kittitas County, Washington. It is not known
16 whether the site is within the 50 year frequency floodway, but it is
17 within a flood control zone established by the Department of Ecology.
18 The site is bordered by: the Yakima River, property owned by the City of
19 Ellensburg and until recently used by it as a sanitary landfill for
20 disposal of its garbage, and various roadways. The elevation of the
21 site is below that of the grade of the adjacent freeway, freeway
22 interchange, and a roadway bordering the river.

23 II.

24 There are no improvements on the site. An area in excess of one
25 acre (derived from the Board's visit to the site) is now a pond of
26 seep water in a shallow depression formed by the excavation of material

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

therefrom during the time of a nearby highway construction project.
The former adjacent landfill garbage dump is higher in elevation than the subject site. As a consequence, the quality of the pond water is degraded by a high fecal coliform and bacteria count, the bottom of the pond is "muck", and discarded tires, trash, piles of dirt and debris have given the site an ecologically abused appearance. Respondent, Keating, did not create that condition, but he has received a multitude of complaints from other persons concerning the pond's use as a public garbage dump, mosquitoes therefrom, and fill material dumped nearby by unknown persons.

III.

The pond and the Yakima River, a shoreline of "state-wide significance" under the Shoreline Management Act, are separated only by a narrow roadway over which access was previously gained to the garbage dump. Although a part of the access road is owned in fee by respondent, Keating, it is subject to an easement. A gate across the roadway at the entrance to the former dump site now prevents the public from entering therein. It is reasonable to expect that some persons, frustrated in their attempts to reach the former public dump site, will continue in the near future to deposit debris in respondent's handy pond.

IV.

Respondent applied for (April 16, 1973) and was denied (June 18, 1973) a shoreline management substantial development permit for a landfill and the construction of a restaurant and gas station. That application was accompanied by a vicinity map and profiles showing the

1 proposed elevation of the fill and ordinary high water of the Yakima
2 River. Respondent, Kittitas County, determined, after evaluating and
3 considering environmental factors, that such project was major but that
4 the environmental consequences were insignificant and that no environ-
5 mental impact statement was necessary.

6 V.

7 On July 16, 1973, the site was rezoned from agricultural to
8 commercial. On July 17, 1973, respondent again applied for a shoreline
9 management substantial development permit. However, the application
10 was limited to a landfill, although Mr. Keating's long range hope and
11 plan is to be able to construct a quality restaurant thereon. Even
12 though Mr. Keating may not be authorized, in the future, to use his
13 site for commercial purposes, he would nonetheless fill the pond
14 thereon.

15 VI.

16 An examination of the application, the affidavit of publication,
17 the permit itself and testimony make it abundantly clear that the
18 permit did not authorize any construction other than a landfill on
19 the site. At any event, respondent received the assistance of the staff
20 of the Kittitas County Planning Office in completing and filing his
21 application for a shoreline management substantial development permit.
22 The same vicinity map and proposed elevations (APP Exhibit 16)
23 furnished with his first application were utilized by the planning
24 staff and the county commissioners in their consideration of his second
25 application. Similarly, the County in evaluating and considering the
26 environmental consequences of the landfill, relied upon its prior

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 determinations of negative impact made while considering the larger
2 project for a fill, restaurant and gas station found in Appellant's
3 Exhibit 9.

4 On September 4, 1973 respondent was granted a permit for a "land-
5 fill of portion of a three and one-half acre parcel" to which these
6 requests for review followed.

7 VII.

8 Respondent's Exhibit 1 demonstrates that the county commissioners
9 intended that the landfill permit be subjected to the imprecise
10 conditions that the fill be approved by the county engineer and health
11 officer as to "type of" fill "material" and "how (method) acreage is
12 filled". Those conditions were not stated upon the permit, nor was
13 Appellant's Exhibit 16 or Respondent's Exhibit 1 attached thereto nor
14 referenced in any way.

15 VIII.

16 The site, in its present condition, is meager in bird life, but it
17 could be improved and be made into a bird habitat. Filling of the pond
18 would have an inconsequential effect on the bird life supported by the
19 waters and wetlands of the Yakima River.

20 IX.

21 Commercial development of private property along the Yakima River
22 between Cle Elum and Ellensburg (the site is so located) is practically
23 non-existent. The comprehensive park and recreational system plan of
24 the City of Ellensburg envisions the preservation of the natural
25 characteristics of the Yakima River. The construction of most commercial
26 buildings on the site would be incompatible with the comprehensive plan.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORD

1 However, a filling of a portion of the site would restore its original
2 condition.

3 X.

4 The goal of the City of Ellensburg is to acquire the site for park
5 purposes by the year 2,000. There are no plans for its acquisition in
6 the near future although other properties are being acquired.

7 XI.

8 A master program under the Shoreline Management Act has not yet
9 been adopted by Kittitas County. The Citizens Shoreline Advisory
10 Committee did not adopt a statement of its goals until September 27, 1973.
11 The permit was granted on September 4, 1973. A subcommittee of the
12 Advisory Committee had adopted by September 4, 1973, for recommendation
13 to the full committee, a policy statement that "commercial development
14 locate inland from designated floodplain and shoreline areas unless that
15 development is particularly dependent upon a shoreline location". The
16 fill granted by the permit is not a "commercial development".

17 XII.

18 Appellants did not prove that the proposed fill would cause
19 significant damage to existing ecological values or natural resources,
20 nor prove that such would occur and create a hazard to adjacent life,
21 property and natural systems. Appellants did not prove that the
22 proposed fill would reduce flood storage capacity nor that a reduction
23 of flood storage capacity would cause damage to others or property.

24 XIII.

25 Any Conclusion of Law hereinafter recited which should be deemed
26 a Finding of Fact is hereby adopted as such.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 From these Findings the Shorelines Hearings Board comes to these

2 CONCLUSIONS OF LAW

3 I.

4 The Yakima River shoreline at and immediately adjacent to the
5 site is not a natural one as that term is used in the Shoreline
6 Management Act, but it is one of state-wide significance.

7 II.

8 Neither the respondent's application nor the substantial develop-
9 ment permit authorized any commercial development upon the site.

10 III.

11 Respondent's proposed fill with the conditions imposed by this
12 Board is a substantial development which would be consistent with the
13 policy section of the Shoreline Management Act and the Guidelines of
14 the Department of Ecology and the master programs being developed for
15 Kittitas County, insofar as can be ascertained.

16 IV.

17 Our review of the question of whether the permit is consistent
18 with the master program "so far as can be ascertained" (RCW 90.58.140(a)
19 (111) is necessarily limited to the status of the master program as of
20 the date of the issuance of the permit by the local government, not as
21 of the date of the hearing on a review before this Board.

22 V.

23 Since respondent's property is within a flood control zone, he
24 must also obtain a permit from the Department of Ecology before he can
25 construct his fill pursuant to his shoreline management permit.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

VI.

Kittitas County, in granting the permit, did consider and evaluate environmental factors and did comply with the requirements of the State Environmental Policy Act.

VII.

The permit is technically defective in that certain conditions sought to be imposed thereon by the County were not, as they should be, expressly made a part of the permit.

VIII.

The granting of a permit by respondent, Kittitas County, to respondent Pat Keating, should be affirmed, but the matter should be remanded to the County for the purpose of reissuing the permit in such form as shall expressly and definitely state thereon the conditions only under which the County shall allow the filling to take place under the permit. Such conditions must deal with the following:

1. There shall be a limitation on the height of the fill to the grade of the access road immediately adjacent to and bordering the Yakima River.
2. Provisions to prevent sediments from the fill entering the small stream on the up-river portion of the fill.
3. Limitation on the type of material to be used in the fill.
4. Specifications for drainage, top soiling, vegetative cover, and safety requirements during filling.
5. Prohibition against any further substantial development without a new substantial development permit.

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER